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Jess A. Carbajal, Director 300 N. Flower Street Santa Ana, CA

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Telephone: (714) 834-2300 Fax: (714) 834-5188

Revision to ASR and/or Exhibits/Attachments

Date: June 11, 2012

To: Susan Novak, Clerk of the Board of Supervi

Cc: County Executive Office

From: Ignacio G. Ochoa, P.E., Interim Director, OC Public Works

ASR Control #(s): 12-000220 for the June 19, 2012 Board Meeting

Subject: Disneyland Resort Adoption of Anaheim-Barber Channel

Explanation:

Revisions to Board of Supervisor District (s) and changes to Exhibits and Attachment A.

Revised Exhibits/Attachments (attached)

Delete Exhibits A - C

Revise Attachment A: Agreement D12-009; see attached for revisions and additional pages.

Additional Information and/or Correspondence (attached)

Board of Supervisors District(s): All Districts 4th District

AGREEMENT

This AGREEMENT, hereinafter refe	rred to as	AGREEMENT", for the purposes of identification
hereby number D12-009 and dated	day of _	, 2012, is
BY and BETWEEN		
and		The ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as "DISTRICT",
anu		The DISNEYLAND RESORT, a division of Walt Disney Parks and Resorts U.S. Inc., hereinafter referred to as "ADOPTER",

which are sometimes individually referred to as "PARTY," or collectively referred to as "PARTIES."

RECITALS

WHEREAS, ADOPTER seeks to adopt DISTRICT's Anaheim Barber City Channel (C03), from Ball Road to Euclid Street in the City of Anaheim;

WHEREAS, this is the pilot program for the public adoption of DISTRICT's right of way which will assist with development of a countywide channel adoption program;

WHEREAS, ADOPTER acknowledges that only ADOPTER and its pre-approved contractor are permitted to access the channel segment;

WHEREAS, ADOPTER agrees to enter into this AGREEMENT with DISTRICT for the adoption of Anaheim Barber City Channel (C03) within DISTRICT's right of way based on the permit and the activities specified in the Work Plan developed between the DISTRICT and ADOPTER; and,

WHEREAS, DISTRICT has determined that ADOPTER's activities are intended mainly to help keep the Channel free of trash and debris and will not impair or diminish existing or probable future requirements for flood control protection in accordance with the terms and conditions of this AGREEMENT.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The intentions of the PARTIES as described in the above recitals are incorporated into this AGREEMENT.

ARTICLE 1

DESCRIPTION OF PREMISES

1.1. ADOPTER shall be allowed to perform activities, per the Work Plan as generally shown on Exhibit B, within Anaheim Barber City Channel (C03), from Ball Road to Euclid Street, within DISTRICT's right of way as generally shown on Exhibit A in accordance with the terms and conditions of this AGREEMENT. This portion of DISTRICT's right of way shall be referred to hereinafter as the "ADOPTED SITE".

ARTICLE 2

CONSIDERATION

- 2.1. ADOPTER and DISTRICT have collaboratively prepared a Work Plan which defines all ADOPTER's activities in the ADOPTED SITE.
- 2.2. ADOPTER shall submit information needed for an encroachment permit from Orange County Property Permits for its activities in the ADOPTED SITE with no application fees.
- 2.3. ADOPTER agrees that DISTRICT shall have no financial obligation to contribute to the activities, which are defined on the Work Plan, of the ADOPTED SITE.
- 2.4. ADOPTER shall be responsible for performing activities within the ADOPTED SITE based on the approved Work Plan as generally shown on Exhibit B during the term of this AGREEMENT as defined in Article 9 below.

ARTICLE 3

REPRESENTATIVES

3.1. DISTRICT REPRESENTATIVE

Director of Orange County Public Works Department or his designee, hereinafter referred to as *DIRECTOR-OCPW," shall be DISTRICT's representative in all matters pertaining to this AGREEMENT.

3.2. ADOPTER REPRESENTATIVE

The Director of Environmental Affairs Department, Disney Resort, or an authorized designee, hereinafter referred to as "<u>DIRECTOR-ADOPTER</u>" shall be ADOPTER's representative in all matters pertaining to this AGREEMENT.

ARTICLE 4 USE OF ADOPTED SITE BY ADOPTER

4.1. PERMITTED USES

ADOPTER shall be permitted to use the ADOPTED SITE for activities per the approved Work Plan as shown on Exhibit B.

4.2. ADOPTER'S RIGHTS ARE NONEXCLUSIVE

ADOPTER's use of the ADOPTED SITE shall be nonexclusive and acknowledges that the primary purpose of DISTRICT's right of way, including, but not limited to ADOPTED SITE is for flood control purposes and to protect the safety, health and welfare of the public. Consequently, DISTRICT reserves the right In its sole and absolute discretion to use the ADOPTED SITE as necessary to access, construct, improve, expand, enlarge, repair, and maintain the DISTRICT flood control facilities, and all other purposes permitted by law. DISTRICT shall provide ADOPTER with at least one working day notice of the need to temporarily close the facility for such work unless emergency conditions require immediate action by DISTRICT in which case ADOPTER shall be notified within a reasonable period of time.

4.3. EMERGENCY RESTRICTIONS ON USE

ADOPTER agrees that DIRECTOR-OCPW may temporarily suspend use of ADOPTED SITE if DIRECTOR-OCPW determines, in DIRECTOR-OCPW's sole and absolute discretion, that

emergency conditions exist such that use of ADOPTED SITE present a risk to the ADOPTER's employee/contractor's health, safety or welfare. DISTRICT shall notify ADOPTER as soon as practicable of the emergency.

ARTICLE 5 TERM OF THE AGREEMENT

5.1. INITIAL TERM

This AGREEMENT and related permit shall commence on the date the AGREEMENT is approved by the DISTRICT's Board of Supervisors and shall continue for two (2) years unless terminated in accordance with the provisions of Article 6 of this AGREEMENT.

5.2. RENEWAL

At the end of the Initial Term, ADOPTER may apply for and DIRECTOR-OCPW may extend the Term of the AGREEMENT up to five (5) additional years if the ADOPTER and/or the ADOPTER's contractor have satisfactorily met the terms of this AGREEMENT and the site remains suitable for adoption. If the ADOPTER wishes to reapply, a notice of such intent shall be submitted to the DISTRICT at least thirty (30) days prior to the expiration date of this AGREEMENT. The DIRECTOR-OCPW may refuse renewal for any reason.

ARTICLE 6 TERMINATION

6.1. TERMINATION BY DISTRICT

This AGREEMENT and related permit may be temporarily suspended or permanently terminated due to construction or other DISTRICT operations at, or within, the vicinity of the ADOPTED SITE. DIRECTOR-OCPW shall notify ADOPTER of its intention to temporarily suspend or permanently terminate the AGREEMENT and related permit pursuant to this section by giving

ADOPTER sixty (60) days written notice. In the event of such termination by DISTRICT, ADOPTER shall not leave any unfinished work on the ADOPTED SITE.

6.2. TERMINATION BY ADOPTER

ADOPTER may terminate this AGREEMENT and related permit by giving DISTRICT sixty (60) days written notice. In the event of such termination by ADOPTER, ADOPTER shall not leave any unfinished work on the ADOPTED SITE.

6.3 TERMINATION DUE TO BREACH OF THE AGREEMENT

If ADOPTER, and/or its contractor, is in material breach of the AGREEMENT and related permit, and fails to diligently cure said breach within sixty (60) calendar days of period as determined by DIRECTOR-OCPW in his sole and absolute discretion, DISTRICT may terminate the AGREEMENT and related permit.

6.4 NOTICE OF TERMINATION

All notices of termination shall be made in writing in accordance with the requirements of Article 12 of this AGREEMENT.

ARTICLE 7 PROHIBITED USES

7.1. MOTORIZED VEHICLES

ADOPTER shall not allow any non-DISTRICT or non-ADOPTER or non-ADOPTER's contractor motorized vehicles to operate within the ADOPTED SITE. The channel invert access is prohibited to all non-DISTRICT vehicles unless authorized by DIRECTOR-OCPW.

7.2. HAZARDOUS MATERIALS

ADOPTER shall not cause or permit any "HAZARDOUS MATERIAL" as hefeinafter defined, to be brought upon, kept, or used in or about the ADOPTED SITE. ADOPTER shall promptly call Orange County Public Works/OC Watersheds at phone 1-877-87SPILL when any sign of

HAZARDOUS MATERIAL is present in the ADOPTED SITE. OC Watersheds will arrange pickup and dispose all HAZARDOUS MATERIAL.

As used herein, the term "HAZARDOUS MATERIAL" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, County of Orange acting in its governmental capacity, the State of California or the United States government.

ARTICLE 8 APROVAL OF THE CONTRACTOR

8.1 DOCUMENTATION FOR APPROVAL

ADOPTER's contractor must submit and maintain the following documents:

- (a) Insurance in accordance with the insurance requirements specified in Exhibit C;
- (b) Subcontracting is not permitted under the channel adoption program unless approved by DIRECTOR-OCPW;
- (c) Orange County and/or City business licenses as required by local governments to perform work authorized under this AGREEMENT.

ARTICLE 9 CHANNEL ADOPTION WORK

9.1 WORK PLAN

ADOPTER and DISTRICT have collaboratively prepared and agreed upon a Work Plan – Exhibit B which includes but is not limited to, the location map of the ADOPTED SITE, a description of specific activities ADOPTER proposes to perform, identification of all non-DISTRICT block walls adjacent to ADOPTED SITE. The Work Plan may be modified over the term of the AGREEMENT upon mutual agreement of ADOPTER and DIRECTOR-OCPW.

9.2 ADOPTER'S RESPONSIBILITIES

ADOPTER acknowledges that it is ADOPTER's responsibility to ensure that ADOPTED SITE is well maintained per DISTRICT's maintenance standards and the Work Plan. If activities are needed to address citizen complaints, ADOPTER shall address these complaints required by the Work Plan, within ten (10) working days after DISTRICT notifies ADOPTER about these complaints.

9.3 SAFETY

- (a) All work in the channel must be in compliance with OSHA requirements;
- (b) Personnel must wear appropriate Personal Protective Equipment (PPE);
- (c) ADOPTER and/or its contractor's vehicles shall not interfere with the free flow of traffic or pedestrians;
- (d) Injuries resulting in an individual seeking medical treatment and vehicular damage resulting in an insurance claim and/or police report shall be reported to Orange County Property Permits by the next business day;
- (e) Contractor's crew must carry an identification card. The card must list the employee's name, the name of the channel adoption contractor, and a phone number where the crew leader can be reached during working hours.

9.4 ADVANCE NOTICE OF THE WORK

ADOPTER must call Operations & Maintenance Section of Orange County Public Works of their plans to work at least forty eight (48) hours before the work is performed by ADOPTER.

9.5 COST OF ADOPTER'S WORK IN ADOPTED SITE

Unless stated in the permit, or a separate written agreement, the ADOPTER shall bear all costs incurred for ADOPTER's work within the ADOPTED SITE and waives all claims for indemnification or contribution from DISTRICT.

9.6 ANNUAL REPORT

An annual report on activities shall be submitted to the OC Watersheds Section of Orange County Public Works as required in the approved Work Plan

9.7 RECOGNITION SIGNS

Recognition or advertisement Signs shall not be installed within DISTRICT's right-of-way unless authorized by DIRECTOR-OCPW. The current ordinance does not allow the signs; however, DISTRICT is looking at ways where such signs can be authorized in the future.

9.8 POLLUTION PREVENTION BEST MANAGEMENT PRACTICES

All activities within the adopted channel segment shall adhere to the following stormwater pollution prevention Best Management Practices (BMP) fact sheets which are available for download at http://www.ocwatersheds.com/BMP.aspx: as provided for in Article 14 and in the approved Work Plan.

These BMPs may evolve over time as updates and modifications are made to the Drainage Area Management Plan, which functions as the DISTRICT's stormwater management plan. The DIRECTOR-OCPW may modify or require additional BMPs as necessary to maintain consistency with the Drainage Area Management Plan.

9.9 REGULATORY PERMITS

ADOPTER shall not perform any activities that require regulatory permits unless ADOPTER obtains these permits. If there are any uncertainties as to whether regulatory permits are required, ADOPTER shall consult DISTRICT. ADOPTER acknowledges that it shall be responsible for obtaining all applicable regulatory permit agreements and satisfying all resource agencies' requirements necessary for the performance of ADOPTER's activities under this AGREEMENT. Furthermore ADOPTER acknowledges that neither the County of Orange nor the DISTRICT shall be co-named in any regulatory permit agreements or obligated to satisfy any of the terms, conditions, provisions mitigation, or monitoring required by the resource agencies via the regulatory permit agreement. ADOPTER shall provide Orange County Public Works/Orange County Engineering/Orange County Property Permits with copies of all regulatory permit

agreements and conditions prior to approval by resource agencies and, once approved, maintain copies at the ADOPTED SITE for inspection purposes.

9.10 PREVAILING WAGE REGULATION

ADOPTER and its contractor shall acknowledge and comply with all provisions of California Prevailing Wage Law including Section 1773 and 1774 of the Labor Code of the State of California for any construction, alteration, demolition, installation, repair, or maintenance work performed on the ADOPTED SITE pursuant to this AGREEMENT. As provided for in California Labor Code Section 1720.4(a)(3) the payment of Prevailing Wages however is not required for any work performed by the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

ARTICLE 10

INDEMNITY AND INSURANCE PROVISIONS

10.1 ADOPTER'S INDEMNITY OBLIGATIONS

ADOPTER agrees to hold DISTRICT, COUNTY, and/or their elected and appointed officials, officers, employees agents and contractors (hereinafter "DISTRICT/COUNTY INDEMNITEES") harmless from any and all claims, losses, or liability, arising from alleged injury or damage to persons or property arising out of the willful misconduct or negligent acts of ADOPTER in connection with this AGREEMENT.

ADOPTER agrees to include in any contract that it awards to perform work in the ADOPTED SITE provisions in which that contractor shall indemnify, defend with counsel approved in writing by DISTRICT, release and hold DISTRICT, COUNTY, and/or DISTRICT/COUNTY INDEMNITEES harmless from any and all claims, losses, or liability, arising from alleged injury or damage to persons or property arising out of: (a) the willful misconduct or negligent acts or omissions of ADOPTER's contractor in connection with work performed in the ADOPTED SITE;

(c) the material or other things used or employed in performing channel adoption work; (d) injury to or death of any person or persons (either workman, employees of its contractor or the public) or damage to adjacent or other property caused by the performance of channel adoption work being performed on ADOPTED SITE.

Nothing contained in this section shall operate to relieve DISTRICT and/or the DISTRICT/COUNTY INDEMNITEES from any loss, injury, liability, damages, claims, costs or expenses to the extent determined by a court of competent jurisdiction to have been proximately caused by the willful misconduct or negligent acts or omissions of DISTRICT and/or the DISTRICT/COUNTY INDEMNITEES or any of them.

The indemnity obligations created by this section as well as any other indemnity obligations created by this AGREEMENT shall survive the termination of this AGREEMENT, to the extent that a claim is based on an event which occurred prior to termination.

10.2 INSURANCE

During the term of this AGREEMENT, ADOPTER shall maintain insurance or self-insurance and cause its contractors to maintain insurance in accordance with the insurance requirements set forth in Exhibit C. The required insurance shall be provided to Orange County Property Permits before the permit is issued. ADOPTER's contractors are required to provide a minimum notice of thirty (30) days to Orange County Property Permits before any reduction in coverage and/or cancellation of coverage becomes effective.

ARTICLE 11

ASSIGNMENT / THIRD PARTY BENEFICIARY PROVISIONS

11.1 ASSIGNMENT BY ADOPTER PROHIBITED

ADOPTER acknowledges that its rights and obligations pursuant to this AGREEMENT are non-transferable. Any attempt by ADOPTER to transfer all or part of its rights or obligations under this AGREEMENT to another party shall be null and void.

11.2 NO THIRD PARTY BENEFICIARY

This AGREEMENT is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person, group or entity, including but not limited to the State and/or members of the general public authorized to use the ADOPTED SITE, as a third party beneficiary, decree, or otherwise. The ADOPTER and the DISTRICT are and will remain the only entities with standing to enforce any of the covenants, terms and conditions of this AGREEMENT.

ARTICLE 12 NOTICE

12.1 NOTICES

All notices or other communications required or permitted under this AGREEMENT shall be provided to the following official at the specified address.

DISNEYLAND RESORT
Attn.: Director of Environmental Affairs
P.O. Box 3232
Anaheim, CA 92803
(Regarding Channel Adoption of Anaheim Barber City Channel (C03))

ORANGE COUNTY FLOOD CONTROL DISTRICT
Director of Orange County Public Works
P.O. Box 4048
Santa Ana, CA 92702-4048
(Regarding Channel Adoption of Anaheim Barber City Channel (C03))

12.2 FORM AND TIMING OF NOTICE

All notices shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by overnight courier and shall be deemed received upon the earlier of:

- (a) If personally delivered, the date of delivery to the address of the person to receive such notice;
- (b) If mailed, three (3) business days after the date of posting by the United States Post

 Office; or
- (c) If sent by overnight courier, when delivered.

12.3 CHANGES OF PERSON TO RECEIVE NOTICE

Either PARTY may change the person or official to receive notice by sending a written notice of that change to the other PARTY.

ARTICLE 13 ACCESS TO DISTRICT'S CHANNEL

13.1 ADOPTER LOCKS

ADOPTER shall be allowed to install an ADOPTER lock on DISTRICT's gates if required for access to the ADOPTED SITE, provided ADOPTER lock ensures that DISTRICT retains its ability to access its facilities.

13.2 <u>DISTRICT ACCESS GATES</u>

DISTRICT access gates not used by the public are to be immediately locked by ADOPTER upon entering or exiting DISTRICT channel right of way to ensure that the flood control facility within the ADOPTED SITE is not accessible to the public.

13.3 <u>USE OF DISTRICT ROADS</u>

ADOPTER acknowledges that the use of earthen DISTRICT access roads is prohibited during inclement weather or when DISTRICT's earthen access roads are wet. When DISTRICT's earthen access roads are wet, ADOPTER's access will be limited to pedestrian access only and ADOPTER shall allow such access only if ADOPTER determines the conditions are safe.

ARTICLE 14

STORMWATER

14.1 COMPLIANCE WITH STORMWATER REGULATIONS

ADOPTER and all ADOPTER's employees and contractors shall conduct activities within the ADOPTED SITE so as to prevent pollutants from entering the DISTRICT's facilities.

The Santa Ana Regional Water Quality Control Board (hereinafter referred to as "RWQCB") has issued permits which regulate stormwater and non-stormwater discharges (Stormwater Permits) resulting from areas owned and operated by the DISTRICT including activities conducted under this AGREEMENT. The COUNTY, DISTRICT and cities within Orange County have enacted water quality ordinances that prohibit activities that result in pollutants being discharged into the Stormwater drainage system, including DISTRICT facilities.

To ensure compliance with Stormwater Permits and water quality ordinances, DISTRICT and COUNTY have developed a Drainage Area Management Plan including a Local Implementation Plan that contains activity-based Best Management Practice (hereinafter referred to as "BMP") fact sheets that parties using DISTRICT owned properties must adhere to. These BMP fact sheets contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

ADOPTER shall review and assure that its contractors working on ADOPTED SITE review the applicable BMP fact sheets.

The BMP fact sheets currently applicable to activities within the adopted channel segment are set forth in Exhibit B:

Activities performed on the ADOPTED SITE under this AGREEMENT shall conform to these BMP fact sheets, as they exist at the time this AGREEMENT commences and as they are modified throughout the term of this AGREEMENT. The BMP fact sheets applicable to uses authorized under this AGREEMENT must be performed as described. ADOPTER shall fully

understand the BMP fact sheets applicable to activities conducted on the ADOPTED SITE prior to conducting them.

ADOPTER and/or its contractors may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP fact sheets. Any such alternative BMP fact sheets shall be submitted to DIRECTOR-OCPW for his review and written approval prior to implementation.

ADOPTER acknowledges it may be required in the future by a regulatory agency such as the RWQCB to implement a self-evaluation program to demonstrate compliance with the requirements of this article.

ARTICLE 15

EXHIBITS

15.1 EXHIBITS

This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein:

Exhibit A -- Description of ADOPTED SITE

Exhibit B - Work Plan

Exhibit C - Insurance Requirements

ARTICLE 16

MISCELLANEOUS PROVISIONS

16.1 ENTIRE AGREEMENT

This document and its Exhibits set forth the entire AGREEMENT among DISTRICT and ADOPTER pertaining to this matter, and may be modified only by further written amendment between the PARTIES hereto.

16.2 AMENDMENTS

It is mutually understood and agreed that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by all necessary PARTIES.

16.3 COMPLIANCE WITH APPLICABLE LAW

Each PARTY and their contractors shall at all times and in all respects comply with all applicable federal, state and local laws, ordinances regulations and permits.

16.4 CALENDAR DAY(S)

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Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

16.5 WAIVER OF RIGHTS

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

16.6 SEVERABILITY

If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

16.7 **AUTHORITY**

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

16.8 EXECUTION IN COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this AGREEMENT, the PARTIES may execute and exchange by telephone facsimile counterparts of the signature pages.

IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its duly authorized representatives as of the date set forth above.

The DISNEYLAND RESORT, a division of Walt Disney Parks and Resorts U.S., Inc.

APPROVED AS TO FORM:

Date: 6/7/2012

David A. Ontko

Deputy Chief Counsel-Head of Legal Disneyland Resort

Disneyland Resort

Office of the County Counsel Orange County, California

Date:

	ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic
Date:	By Chair of the Board of Supervisors Orange County, CA
	Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec 25103, Reso 79-1535
	Attest:
Date:	Susan Novak Clerk of the Board of Supervisors County of Orange, California
APPROVED AS TO FORM:	

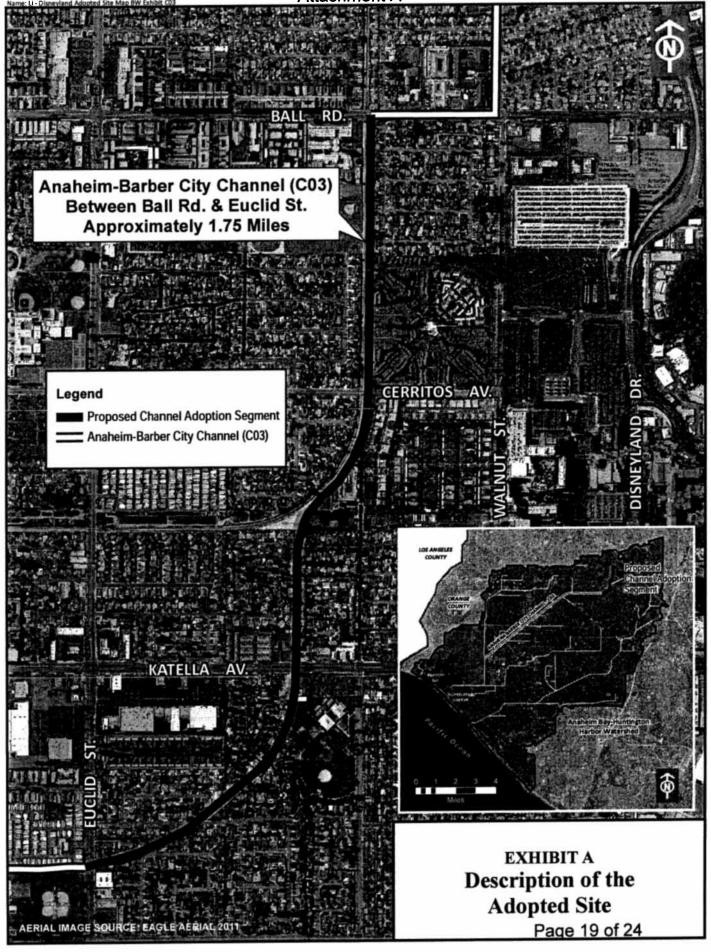


Exhibit B

to Agreement No. D12-009

Work Plan

for

Anaheim-Barber City Channel (C03) from Ball Rd. to Euclid St.

County of Orange Channel Adoption Program

Adopter: The Disneyland Resort, a division of Walt Disney Parks and Resorts U.S. Inc.

Adopter

Primary Contacts: Debbie Mills, Environmental Project Manager, Environmental Affairs

Disneyland Resort (714) 781-4975

Frank Dela Vara, Director, Environmental Affairs

Disneyland Resort (714) 781-4344

County of Orange Flood Control (District)

Primary Contacts: Grant Sharp, Stormwater Program Manager

OC Public Works/OC Watersheds

(714) 955-0674

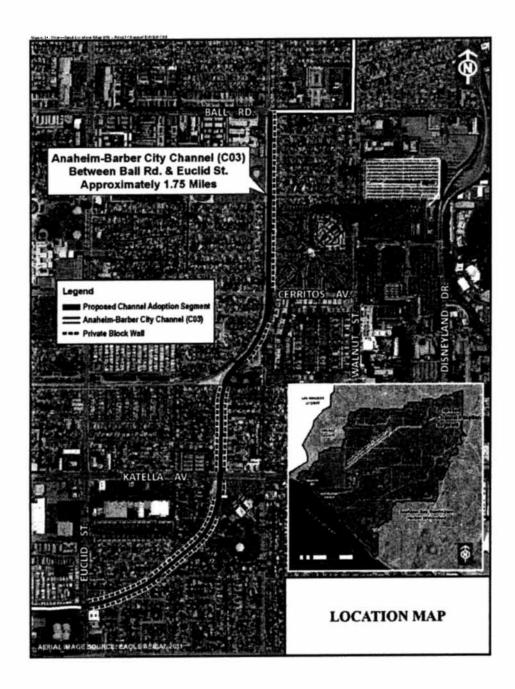
A.J. Jaime, Supervising Maintenance Inspector OC Public Works/Operations & Maintenance

(714) 955-0338

District Channel: Anaheim Barber City Channel (C03)

Condition: 100% Concrete, Trapezoidal

Segment: Ball Rd. downstream to Euclid St. (Approx. 1.75 miles)



Background:

In adherence with Agreement No. D12-009 between Adopter and the Orange County Flood Control District (District), this work plan (Exhibit B) will serve as the basis for the activities conducted by the Adopter within District right of way at no cost to District or the County of Orange.

1. Inspection

a. Adopter will inspect the adopted channel segment on a bimonthly basis.

2. Personnel/Equipment Access

- Access to the adopted channel segment is limited to Adopter's staff and their contractors which have been pre-approved by the County;
- b. Motorized vehicles and equipment will not be used in the channel invert.

3. Trash/Debris Removal

- Trash/debris will be removed as needed and properly disposed of. Trash/debris will not be staged on the maintenance road in a manner that obstructs access by maintenance vehicles;
- b. Adopter will immediately notify OC Public Works/OC Watersheds (1-877-89SPILL) of any items identified within District right of way as hazardous waste; OC Watersheds will arrange pickup and disposal of all hazardous items.

4. Weed Control/Abatement

- a. Weeds in District right of way will be removed using mechanical means.
- b. Removal of any vegetation from within the channel banks is prohibited.
- c. The use of herbicides or algaecides within District right of way is prohibited.

5. Graffiti Abatement

- a. Graffiti will be completely covered using water based misty grey paint on concrete and color matching of all other areas will be done;
- b. Sand blasting or chemical graffiti removal methods will be prohibited;
- c. Adopter shall coordinate with private owners for graffiti removal on private block walls adjacent to the channel.

6. Pollution Prevention Best Management Practices

- Adopter will conduct all activities within District right of way in adherence with the following pollution prevention Best Management Practices (BMPs):
 - i. FF-13, Waste Handling and Disposal
 - ii. DF-1, Drainage Facility Operation and Maintenance
 - iii. FP-5, Solid Waste Handling
 - iv. IC13 Over Water Activities
 - v. IC14 Painting, Finishing, & Coatings of Vehicles, Boats, Buildings, & Equipment
 - vi. IC17 Spill Prevention & Cleanup
 - vii. IC21 Waste Handling & Disposal

7. Annual Report

Adopter will prepare and submit to District, an annual report of activities by August 1 of each year. The report will cover a period between July 1 and June 30 annually (reporting period). The report will include details on amounts/types of trash/debris removed (quantified by date), inspection reports, graffiti abatement, and all other activities conducted.

EXHIBIT C

INSURANCE REQUIREMENTS

During the term of this AGREEMENT, ADOPTER shall maintain commercial insurance or self-insurance to cover its general liability, exposure and indemnity obligation associated with this AGREEMENT. Upon request ADOPTER shall provide DISTRICT with proof of general liability insurance with limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate, or a letter evidencing ADOPTER's self-insurance program acceptable to DISTRICT, within seven (7) days of the effective date of this AGREEMENT.

Adopter shall cause its contractors performing work within the PREMISES, at contractors' expense, to maintain and provide proof of insurance to ADOPTER as set forth below:

Coverage/Limits

Coverage	Minimum Limits
Commercial General Liability with products and completed operations and contractual liability	\$1,000,000 limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Oualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A-(Secure A.M. Best 's rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States** or ambest.com

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange and Orange County Flood Control District, their elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance maintained by the County of Orange, Orange County Flood Control District shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, the Orange County Flood District and members of the Board of Supervisors, their elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, the Orange County Flood Control District, and members of their Board of Supervisors, their elected and appointed officials, officers, employees and agents.

The procuring of such required policy or policies of insurance shall not be construed to limit ADOPTER'S and/or its'Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

AGREEMENT

This AGREEMENT, hereinafter referred to as "	AGREEMENT", for the purposes of identification
hereby number D12-009 and dated day of _	, 2012, is
BY and BETWEEN	
	The ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as "DISTRICT",
and	The DISNEYLAND RESORT, a division of Walt Disney Parks and Resorts U.S. Inc.California Corporation, hereinafter referred to as "ADOPTER",

which are sometimes individually referred to as "PARTY," or collectively referred to as "PARTIES."

RECITALS

WHEREAS, ADOPTER seeks to adopt DISTRICT's Anaheim Barber City Channel (C03), from Ball Road to Euclid Street in the City of Anaheim;

WHEREAS, this is the pilot program for the public adoption of DISTRICT's right of way which will assist with development of a countywide channel adoption program;

WHEREAS, ADOPTER acknowledges that only ADOPTER and its pre-approved contractor are permitted to access the channel segment;

WHEREAS, ADOPTER agrees to enter into this AGREEMENT with DISTRICT for the maintenance adoption of Anaheim Barber City Channel (C03) within DISTRICT's right of way based on the permit and the activities specified in the Work Plan developed between the DISTRICT and ADOPTER; and,

whereas, DISTRICT has determined that ADOPTER's maintenanceactivities are intended mainly to help keep the Channel free of trash and debris and will not impair or diminish existing or probable future requirements for flood control protection in accordance with the terms and conditions of this AGREEMENT.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The intentions of the PARTIES as described in the above recitals are incorporated into this AGREEMENT.

ARTICLE 1 DESCRIPTION OF PREMISES

1.1. ADOPTER shall be allowed to perform activities, per the Work Plan as generally shown on Exhibit B, withinmaintain Anaheim Barber City Channel (C03), from Ball Road to Euclid Street, within DISTRICT's right of way as generally shown on Exhibit A in accordance with the terms and conditions of this AGREEMENT. This portion of DISTRICT's right of way shall be referred to hereinafter as the "ADOPTED SITE".

ARTICLE 2

CONSIDERATION

- 2.1. ADOPTER and DISTRICT have collaboratively prepared a Work Plan which defines all ADOPTER's maintenance activities in the ADOPTED SITE.
- 2.2. ADOPTER shall submit information needed for an encroachment permit from Orange County
 Property Permits for its maintenance activities in the ADOPTED SITE with no application fees.
- 2.3. ADOPTER agrees that DISTRICT shall have no financial obligation to contribute to the maintenance activities, which are defined on the Work Plan, of the ADOPTED SITE.
- 2.4. ADOPTER shall be responsible for continuing the maintenance of the performing activities within the ADOPTED SITE based on the approved Work Plan as generally shown on Exhibit B during the term of this AGREEMENT as defined in Article 9 below.

ARTICLE 3

REPRESENTATIVES

3.1. DISTRICT REPRESENTATIVE

Director of Orange County Public Works Department or his designee, hereinafter referred to as "DIRECTOR_OCPW," shall be DISTRICT's representative in all matters pertaining to this AGREEMENT.

3.2. ADOPTER REPRESENTATIVE

The	Director of Environmental Affairs
Department, Disney Resort, or an authorized desig	nee, hereinafter referred to as
"	OPTER" shall be ADOPTER's representative in
all matters pertaining to this AGREEMENT.	

ARTICLE 4 USE OF ADOPTED SITE BY ADOPTER

4.1. PERMITTED USES

ADOPTER shall be permitted to use the ADOPTED SITE for maintenance activities per the approved Work Plan as shown on Exhibit B.

4.2. ADOPTER'S RIGHTS ARE NONEXCLUSIVE

ADOPTER's use of the ADOPTED SITE shall be nonexclusive and acknowledges that the primary purpose of DISTRICT's right of way, including, but not limited to ADOPTED SITE is for flood control purposes and to protect the safety, health and welfare of the public. Consequently, DISTRICT reserves the right in its sole and absolute discretion to use the ADOPTED SITE as necessary to access, construct, improve, expand, enlarge, repair, and maintain the DISTRICT flood control facilities, and all other purposes permitted by law. ADOPTER agrees to indemnify, defend with counsel approved by DISTRICT, and hold DISTRICT and COUNTY harmless from any and all claims, losses, or liabilities, arising from alleged injury or damage to persons or property arising out of ADOPTER's use of the ADOPTED SITE. DISTRICT shall provide ADOPTER with at least one working day notice of the need to temporarily close the facility for

such work unless emergency conditions require immediate action by DISTRICT in which case ADOPTER shall be notified within a reasonable period of time.

4.3. EMERGENCY RESTRICTIONS ON USE

ADOPTER agrees that DIRECTORDIRECTOR-OCPW may temporarily suspend use of ADOPTED SITE if DIRECTORDIRECTOR-OCPW determines, in DIRECTORDIRECTOR-OCPW's sole and absolute discretion, that emergency conditions exist such that use of ADOPTED SITE present a risk to the ADOPTER's employee/contractor's health, safety or welfare. DISTRICT shall notify ADOPTER as soon as practicable of the emergency.

ARTICLE 5 TERM OF THE AGREEMENT

5.1. INITIAL TERM

This AGREEMENT and related permit shall commence on the date the AGREEMENT is approved by the DISTRICT's Board of Supervisors and shall continue for two (2) years unless terminated in accordance with the provisions of Article 6 of this AGREEMENT.

5.2. RENEWAL

At the end of the Initial Term, ADOPTER may apply for and DIRECTORDIRECTOR-OCPW may extend the Term of the AGREEMENT up to five (5) additional years if the ADOPTER and/or the ADOPTER's contractor have satisfactorily met the terms of this AGREEMENT and the site remains suitable for adoption. If the ADOPTER wishes to reapply, a notice of such intent shall be submitted to the DISTRICT at least thirty (30) days prior to the expiration date of this AGREEMENT. The DIRECTORDIRECTOR-OCPW may refuse renewal for any reason.

ARTICLE 6 TERMINATION

6.1. TERMINATION BY DISTRICT

This AGREEMENT and related permit may be temporarily suspended or permanently terminated due to construction or other DISTRICT operations at, or within, the vicinity of the ADOPTED SITE. DIRECTORDIRECTOR-OCPW shall notify ADOPTER of its intention to temporarily suspend or permanently terminate the AGREEMENT and related permit pursuant to this section by giving ADOPTER sixty (60) days written notice. In the event of such termination by DISTRICT, ADOPTER shall not leave any unfinished work on the ADOPTED SITE.

6.2. TERMINATION BY ADOPTER

ADOPTER may terminate this AGREEMENT and related permit by giving DISTRICT sixty (60) days written notice. In the event of such termination by ADOPTER, ADOPTER shall not leave any unfinished work on the ADOPTED SITE.

6.3 TERMINATION DUE TO BREACH OF THE AGREEMENT

If ADOPTER, and/or its contractor, is in material breach of the AGREEMENT and related permit, and fails to diligently cure said breach within sixty (60) calendar days of period as determined by <a href="https://doi.org/10.1007/journal.com/doi.org/10.1007

6.4 NOTICE OF TERMINATION

All notices of termination shall be made in writing in accordance with the requirements of Article 12 of this AGREEMENT.

ARTICLE 7 PROHIBITED USES

7.1. MOTORIZED VEHICLES

ADOPTER shall not allow any non-DISTRICT or non-ADOPTER or non-ADOPTER's contractor motorized vehicles to operate within the ADOPTED SITE. The channel invert access is prohibited to all non-DISTRICT vehicles <u>unless authorized by DIRECTOR DIRECTOR-OCPW</u>.

7.2. HAZARDOUS MATERIALS

ADOPTER shall not cause or permit any "HAZARDOUS MATERIAL" as hereinafter defined, to be brought upon, kept, or used in or about the ADOPTED SITE. ADOPTER shall promptly call Orange County Public Works/OC Watersheds at phone 1-877-87SPILL when any sign of HAZARDOUS MATERIAL is present in the ADOPTED SITE. OC Watersheds will arrange pickup and dispose all HAZARDOUS MATERIAL.

As used herein, the term "HAZARDOUS MATERIAL" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, County of Orange acting in its governmental capacity, the State of California or the United States government.

ARTICLE 8 APROVAL OF THE CONTRACTOR

8.1 DOCUMENTATION FOR APPROVAL

ADOPTER's contractor must submit and maintain the following documents:

- (a) Insurance in accordance with the insurance requirements specified in Exhibit C;
- (b) Professional license as required by the California Contractors State License Board and/or the California Department of Pesticide Regulation to perform work authorized under this AGREEMENT. Subcontracting is not permitted under the channel adoption program unless approved by DIRECTORDIRECTOR-OCPW;
- (c) Orange County and/or City business licenses as required by local governments to perform work authorized under this AGREEMENT.

ARTICLE 9 CHANNEL ADOPTION WORK

9.1 WORK PLAN

ADOPTER and DISTRICT have collaboratively prepared and agreed upon a Work Plan – Exhibit B which includes but is not limited to, the location map of the ADOPTED SITE, a description of specific maintenance work activities ADOPTER proposes to perform, identification of all non-DISTRICT block walls adjacent to ADOPTED SITE. The Work Plan may be modified over the term of the AGREEMENT upon mutual agreement of ADOPTER and DIRECTORDIRECTOROPM.

9.2 ADOPTER'S RESPONSIBILITIES

ADOPTER acknowledges that it is ADOPTER's responsibility to ensure that ADOPTED SITE is well maintained per DISTRICT's maintenance standards and the Work Plan. ADOPTER acknowledges and agrees that DISTRICT shall not be deemed negligent in the maintenance and/or operation of the ADOPTED SITE if DISTRICT operates and maintains the ADOPTED SITE in substantial conformance with standard DISTRICT practices used for similar DISTRICT facilities. If maintenance_activities specified in the Work Plan are needed to address citizen complaints, ADOPTER shall address these complaints required by the Work Plan, within ten (10) working days after DISTRICT notifies ADOPTER about these complaints.

9.3 SAFETY

- (a) All work in the channel must be in compliance with OSHA requirements;
- (b) Personnel must wear appropriate Personal Protective Equipment (PPE);
- (c) ADOPTER and/or its contractor's vehicles shall not interfere with the free flow of traffic or pedestrians;
- (d) Injuries resulting in an individual seeking medical treatment and vehicular damage resulting in an insurance claim and/or police report shall be reported to Orange County Property Permits by the next business day;

(e) Contractor's crew must carry an identification card. The card must list the employee's name, the name of the channel adoption contractor, and a phone number where the crew leader can be reached during working hours.

9.4 ADVANCE NOTICE OF THE WORK

ADOPTER must notify call Operations & Maintenance Section of Orange County Public Works of their plans to work at least-five (5) working days, but no more than one month forty eight (48) hours before the work is performed by ADOPTER-and accepted by the site inspection.

9.5 COST OF ADOPTER'S WORK IN ADOPTED SITE

Unless stated in the permit, or a separate written agreement, the ADOPTER shall bear all costs incurred for ADOPTER's work within the ADOPTED SITE and waives all claims for indemnification or contribution from DISTRICT.

9.6 ANNUAL REPORT

An annual report on activities shall be submitted to the OC Watersheds Section of Orange County

Public Works as required in the approved Work Plan

9.7 RECOGNITION SIGNS

Recognition or advertisement Signs shall not be installed within DISTRICT's right-of-way unless authorized by DIRECTOR-OCPW. The current ordinance does not allow the signs; however, DISTRICT is looking at ways where such signs can be authorized in the future.

9.8 POLLUTION PREVENTION BEST MANAGEMENT PRACTICES

All activities within the adopted channel segment shall adhere to the following stormwater pollution prevention Best Management Practices (BMP) fact sheets which are available for download at http://www.ocwatersheds.com/BMP.aspx: as provided for in Article 14 and in the approved Work Plan.

These BMPs may evolve over time as updates and modifications are made to the Drainage Area

Management Plan, which functions as the DISTRICT's stormwater management plan. These

BMPs may evolve over time as updates and modifications are made to the Drainage Area

Management Plan, which functions as the DISTRICT's stormwater management plan. The DIRECTOR_OCPW may modify or require additional BMPs as necessary to maintain consistency with the Drainage Area Management Planif DIRECTOR determines that such modified or additional BMPs are necessary for DISTRICT being compliant under applicable law for its maintenance of flood control facilities.

9.9 **REGULATORY PERMITS**

ADOPTER shall not perform any activities that require regulatory permits unless ADOPTER obtains these permits. If there are any uncertainties as to whether regulatory permits are required, ADOPTER shall consult DISTRICT. ADOPTER acknowledges that it shall be responsible for obtaining all applicable regulatory permit agreements and satisfying all resource agencies' requirements necessary for the performance of ADOPTER's activities under this AGREEMENT. Furthermore ADOPTER acknowledges that neither the County of Orange nor the DISTRICT shall be co-named in any regulatory permit agreements or obligated to satisfy any of the terms, conditions, provisions mitigation, or monitoring required by the resource agencies via the regulatory permit agreement. ADOPTER shall provide Orange County Public Works/Orange County Engineering/Orange County Property Permits with copies of all regulatory permit agreements and conditions prior to approval by resource agencies and, once approved, maintain copies at the ADOPTED SITE for inspection purposes.

9.10 PREVAILING WAGE REGULATION

ADOPTER and its contractor shall acknowledge and comply with all provisions of California

Prevailing Wage Law including Section 1773 and 1774 of the Labor Code of the State of

California for any for the work pursuant to this AGREEMENT construction, alteration, demolition, installation, repair, or maintenance work performed on the ADOPTED SITE pursuant to this

AGREEMENT. As provided for in California Labor Code Section 1720.4(a)(3) the payment of

Prevailing Wages however is not required for any work performed by the California Conservation

Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

ARTICLE 10 INDEMNITY AND INSURANCE PROVISIONS

10.1 <u>ADOPTER'S INDEMNITY OBLIGATIONS</u>

ADOPTER agrees to hold DISTRICT, COUNTY, and/or their elected and appointed officials, officers, employees agents and contractors (hereinafter "DISTRICT/COUNTY INDEMNITEES") harmless from any and all claims, losses, or liability, arising from alleged injury or damage to persons or property arising out of the willful misconduct or negligent acts of ADOPTER in connection with this AGREEMENT.

ADOPTER agrees [that] it shall indemnify, defend with counsel approved in writing by DISTRICT, release-to include in any contract that it awards to perform work in the ADOPTED SITE provisions in which that contractor it shall indemnify, and hold DISTRICT, COUNTY, and/or DISTRICT/COUNTY INDEMNITEES harmless from any and all claims, losses, or liability, arising out of: (a) breach of the terms and conditions of this AGREEMENT by ADOPTER and/or its contractor; (b) the willful misconduct or negligent acts or omissions of ADOPTER's and/or its contractor in connection with this AGREEMENT work performed in the ADOPTED SITE; (c) [b] the material or other things used or employed in performing channel adoption work; (d) [c] injury to or death of any person or persons (either workman, employees of ADOPTER or its contractor or the public) or damage to adjacent or other property caused by the performance of channel adoption work being performed on ADOPTED SITE.

Nothing contained in this section shall operate to relieve DISTRICT and/or the

DISTRICT/COUNTY INDEMNITEES from any loss, injury, liability, damages, claims, costs or

expenses to the extent determined by a court of competent jurisdiction to have been proximately

caused by the willful misconduct or negligent acts or omissions of DISTRICT and/or the DISTRICT/COUNTY INDEMNITEES or any of them.

The indemnity obligations created by this section as well as any other indemnity obligations created by this AGREEMENT shall survive the termination of this AGREEMENT, to the extent that a claim is based on an event which occurred prior to termination.

10.2 INSURANCE

During the term of this AGREEMENT, ADOPTER shall maintain insurance or self-insurance and cause its contractors to maintain insurance in accordance with the insurance requirements set forth in Exhibit C. The required insurance shall be provided to Orange County Property Permits before the permit is issued. ADOPTER's contractors are required to provide a minimum notice of thirty (30) days to Orange County Property Permits before any reduction in coverage and/or cancellation of coverage becomes effective.

ARTICLE 11

ASSIGNMENT / THIRD PARTY BENEFICIARY PROVISIONS

11.1 ASSIGNMENT BY ADOPTER PROHIBITED

ADOPTER acknowledges that its rights and obligations pursuant to this AGREEMENT are non-transferable. Any attempt by ADOPTER to transfer all or part of its rights or obligations under this AGREEMENT to another party shall be null and void.

11.2 NO THIRD PARTY BENEFICIARY

This AGREEMENT is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person, group or entity, including but not limited to the State and/or members of the general public authorized to use the ADOPTED SITE, as a third party beneficiary, decree, or otherwise. The ADOPTER and the DISTRICT are and will remain the only entities with standing to enforce any of the covenants, terms and conditions of this AGREEMENT.

ARTICLE 12 NOTICE

12.1 NOTICES

All notices or other communications required or permitted under this AGREEMENT shall be provided to the following official at the specified address.

•		
Attn.:	 	
		
<i>-</i>		
*	 	

DISNEYLAND RESORT

Attn.: <u>Director of Environmental Affairs</u>

P.O. Box 3232

Anaheim, CA 92803

(Regarding Channel Adoption of Anaheim Barber City Channel (C03))

ORANGE COUNTY FLOOD CONTROL DISTRICT
Director of Orange County Public Works
P.O. Box 4048
Santa Ana, CA 92702-4048
(Regarding Channel Adoption of Anaheim Barber City Channel (C03))

12.2 FORM AND TIMING OF NOTICE

All notices shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by overnight courier and shall be deemed received upon the earlier of:

- (a) If personally delivered, the date of delivery to the address of the person to receive such notice;
- (b) If mailed, three (3) business days after the date of posting by the United States Post

 Office; or
- (c) If sent by overnight courier, when delivered.

12.3 CHANGES OF PERSON TO RECEIVE NOTICE

Either PARTY may change the person or official to receive notice by sending a written notice of that change to the other PARTY.

ARTICLE 13 ACCESS TO DISTRICT'S CHANNEL

13.1 ADOPTER LOCKS

ADOPTER shall be allowed to install an ADOPTER lock on DISTRICT's gates if required for access to the ADOPTED SITE, provided ADOPTER lock ensures that DISTRICT retains its ability to access its facilities.

13.2 DISTRICT ACCESS GATES

DISTRICT access gates not used by the public are to be immediately locked by ADOPTER upon entering or exiting DISTRICT channel right of way to ensure that the flood control facility within the ADOPTED SITE is not accessible to the public.

13.3 USE OF DISTRICT ROADS

ADOPTER acknowledges that the use of earthen DISTRICT access roads is prohibited during inclement weather or when DISTRICT's earthen access roads are wet. When DISTRICT's earthen access roads are wet, ADOPTER's access will be limited to pedestrian access only and ADOPTER shall allow such access only if ADOPTER determines the conditions are safe.

ARTICLE 14

STORMWATER

14.1 COMPLIANCE WITH STORMWATER REGULATIONS

ADOPTER and all ADOPTER's employees and contractors shall conduct activities within the ADOPTED SITE so as to prevent pollutants from entering the DISTRICT's facilities.

The Santa Ana Regional Water Quality Control Board (hereinafter referred to as "RWQCB") has issued permits which regulate stormwater and non-stormwater discharges (Stormwater Permits)

resulting from areas owned and operated by the DISTRICT including activities conducted under this AGREEMENT. The COUNTY, DISTRICT and cities within Orange County have enacted water quality ordinances that prohibit activities that result in pollutants being discharged into the Stormwater drainage system, including DISTRICT facilities.

To ensure compliance with Stormwater Permits and water quality ordinances, DISTRICT and COUNTY have developed a Drainage Area Management Plan including a Local Implementation Plan (hereinafter referred to as "DAMP/LIP") that contains activity-based Best Management Practice (hereinafter referred to as "BMP") fact sheets that parties using DISTRICT owned properties must adhere to. These BMP fact sheets contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

ADOPTER shall review and assure that its contractors working on ADOPTED SITE review the applicable BMP fact sheets.

The BMP fact sheets currently applicable to activities within the adopted channel segment are set forth in Exhibit B:

Activities performed on the ADOPTED SITE under this AGREEMENT shall conform to these BMP fact sheets, as they exist at the time this AGREEMENT commences and as they are modified throughout the term of this AGREEMENT. The BMP fact sheets applicable to uses authorized under this AGREEMENT must be performed as described. ADOPTER shall fully understand the BMP fact sheets applicable to activities operations conducted on the ADOPTED SITE prior to conducting them.

ADOPTER and/or its contractors may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP fact sheets. Any such alternative BMP fact sheets shall be submitted to <a href="https://doi.org/10.1007/journal.com/blacetas/b

ADOPTER acknowledges it may be required in the future by a regulatory agency such as the RWQCB to implement a self-evaluation program to demonstrate compliance with the requirements of this article.

ARTICLE 15 EXHIBITS

15.1 EXHIBITS

This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein:

Exhibit A -- Description of ADOPTED SITE

Exhibit B -- Work Plan

Exhibit C -- DISTRICT Insurance Requirements

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 ENTIRE AGREEMENT

This document and its Exhibits set forth the entire AGREEMENT among DISTRICT and ADOPTER pertaining to this matter, and may be modified only by further written amendment between the PARTIES hereto.

16.2 AMENDMENTS

It is mutually understood and agreed that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by all necessary PARTIES.

16.3 COMPLIANCE WITH APPLICABLE LAW

Each PARTY and their contractors shall at all times and in all respects comply with all applicable federal, state and local laws, ordinances regulations and permits.

16.4 CALENDAR DAY(S)

Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

16.5 WAIVER OF RIGHTS

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

16.6 **SEVERABILITY**

If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

16.7 **AUTHORITY**

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

16.8 EXECUTION IN COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this AGREEMENT, the PARTIES may execute and exchange by telephone facsimile counterparts of the signature pages.

David Ontko

IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its duly authorized representatives as of the date set forth above.

	The DISNEYLAND RESORT, a division of Walt Disney Parks and Resorts U.S., Inc.
Date:	BY:
- <u>Frank Dela Vara</u>	
	Environmental Affairs, Disneyland Resort
Date:	BY:
	Print Name:
	Position:
APPROVED AS TO FORM:	
Deputy Chief Counsel Disneyland Resort	
Attorney	
Date:	
By	

	ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic
Date:	ByChair of the Board of Supervisors Orange County, CA
	County of Orange, a political subdivision of the State of California
Date:	By Chair of the Board of Supervisors Orange County, CA
	Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec 25103, Reso 79-1535
	Attest:
Date:	Susan Novak Clerk of the Board of Supervisors County of Orange, California
APPROVED AS TO FORM: Office of the County Counsel Orange County, California	
Date:	
By Deputy	